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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,277	11/29/2001	Bruce Jon Compton	1012-02	3115
7590 04/08/2005 Stephen J Gaudet 68H Stiles Road Salem, NH 03079			EXAMINER WEBMAN, EDWARD J	
			ART UNIT 1616	PAPER NUMBER

DATE MAILED: 04/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/997,277

Applicant(s)

COMPTON ET AL.

Examiner

Edward J. Webman

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 9,16 and 29-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8,10-15,17-22 and 24-28 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Applicant's election with traverse of Group I, a flake with a drug, the drug embedded in the flake, a natural polymer in the reply filed on 8/25/03 and 12/29/03 is acknowledged. The traversal is on the ground(s) that Groups I and II are not distinct. This is not found persuasive because applicants' statement is conclusory; it does not address the explanation for distinctness provided in the restriction requirement.

The requirement is still deemed proper and is therefore made FINAL.

Applicants overlooked the election of species requirement over claim 24. The election of species requirement regarding solid and semisolid should have been directed to the carrier rather than flakes. Both requirements are withdrawn.

Claim 23 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend on any other multidependent claim. See MPEP § 608.01(n). Accordingly, the claim 23 had not been further treated on the merits.

Claims 1-8, 10-15, 17-22, 24-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 "of a non drug" is indefinite; is "or a nondrug" intended?

In claim 8, "anyone" appears to be a typo.

In claim 13, "any on" is not clear.

In claim 14 "is" is indefinite. Is "or" intended?

In claim 25 "nonsuitable" is indefinite; is unsuitable intended?

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 15, 18-22, 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuisz.

Fuisz teaches flakes (column 4 line 62). Maltodextrin is disclosed (abstract).

Actives are specified (column 9 line 1 first sentence).

Food carriers are disclosed (column 8 lines 51-64). Cosmetics are specified (column 9 line 65). Ice cream is disclosed (column 14 line 50).


Gels are disclosed (column 14 line 68). Enhanced food products and medical delivery are specified (column 5 line 14).

It would have been obvious to make flakes for the beneficial effect of enhanced food products and medical delivery in view of Fuisz.

As to the claimed dimensions, such are within the skill of the art to achieve a beneficial effect and are not considered critical absent evidence to the contrary. In re Bosch 205 USPQ 215 (CCPA 1980).

No claims allowed.

Any inquiry concerning this communication should be directed to Edward J. Webman at telephone number 571-272-0633.

  
EDWARD J. WEBMAN  
PATENT EXAMINER  
ART UNIT 1617